

REMARKS/ARGUMENTS

In the restriction/election of species requirement dated March 2, 2009, the Examiner delineated the following inventions as being patentably distinct:

- Group I: Claim(s) 1-20 and 23-27, drawn to a method of producing pharmaceutical or parts of pharmaceuticals or food supplements or parts thereof and the resulting products; and
- Group II: Claim(s) 21, drawn to a drum coater, coating pan, fluidized bed apparatus or spray sifter comprising one or more three-fluid nozzles as spray device.

The Examiner further required the election of species. Accordingly, Applicants elect the invention of Group I and for species of Claim 5 both with traverse. The claims of Groups I and II are integrally linked as method of making a product and the use thereof.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinctions.

There is a technical relationship that describes both of the Groups and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

The Examiner asserts that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding technical feature. The Examiner has not considered that the claims in each group are considered to have related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of inventions.

Applicant submit that while Rules 13.1 and 13.2 are applicable, 37 C.F.R. § 1.475(b) provides in relevant part a “national stage application containing claims to different categories of invention are considered to have unity of invention if the claims are drawn to --- (3) a product, process specially adapted for the manufacture of said product, and the use of said product.”

Moreover Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a restriction should be required when the International Preliminary Examination Report did not, the restriction is believed to be improper. Unity of invention has to be considered in the first place only in relation to the independent claim. A dependent claim is one which contains all the features of another claim and is in the same category as other claims. It does not matter if a dependent claim itself contains a further invention

Further, the M.P.E.P. § 803 states as follows:

If the search and examination of an entire application can be made without a serious burden the Examiner must examine it on the merits even though it includes claims to distinct and independent inventions.

For the reasons set forth above, Applicants request the Restriction Requirement be withdrawn.

Divisional applications filed thereafter claiming the non-elected species should not be subject to double-patenting ground of rejection, 35 U.S.C. § 121, *In re Joyce* (Comr. Pats. 1957) 115 USPQ 412.

Applicants further request that should the elected species be found allowable, the Examiner expand the search to include the non-elected species.

Applicants submit that the above-identified application is now in condition for examination on the merits and an early Notice of such action is earnestly solicited.

Respectfully submitted,

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